United Nations

A/58/171

General Assembly

Distr.: General
18 July 2003

Original: English

Fifty-eighth session
Item 19 of the provisional agenda*
Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Question of Western Sahara

Report of the Secretary-General

Summary

The present report, submitted pursuant to General Assembly resolution 57/135 of 11 December 2002, summarizes the reports that have been submitted by the Secretary-General to the Security Council on the situation concerning Western Sahara from 1 July 2002 to 30 June 2003.

* A/58/150.

03-43570 (E) 080803

1. On 11 December 2002, the General Assembly adopted, without a vote, resolution 57/135 on the question of Western Sahara. The Secretary-General, in close cooperation with the interim Chairperson of the Commission of the African Union, has continued to exercise his good offices with the parties concerned. The present report, which covers the period from 1 July 2002 to 30 June 2003, is submitted in accordance with paragraph 13 of resolution 57/135.

2. On 30 July 2002, the Security Council adopted resolution 1429 (2002), by which it extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 31 January 2003. Under that resolution, the Council, inter alia, continued to support the efforts of the Secretary-General and his Personal Envoy, James A. Baker III, to find a political solution to the long-standing dispute in Western Sahara that would take into account the concerns expressed by the parties. The Council also expressed its readiness to consider any approach which provided for self-determination that might be proposed by the Secretary-General and the Personal Envoy, consulting, as appropriate, others with relevant experience and requested the Secretary-General to provide a report on the situation before the end of January 2003 that would contain any further proposal from the Secretary-General and his Personal Envoy together with recommendations pertaining to the most appropriate configuration of MINURSO.

3. Pursuant to the above-mentioned resolution, the Secretary-General submitted to the Security Council, on 16 January 2003, a report (S/2003/59) in which he informed the Council that his Personal Envoy was scheduled to visit the region and meet with officials of the Government of Morocco and the leadership of the Frente POLISARIO, as well as officials of the neighbouring States, Algeria and Mauritania, in order to present and explain to the parties and neighbouring countries a new proposal for a political solution to the conflict over Western Sahara, which would provide for self-determination, as requested by the Security Council in its resolution 1429 (2002). On the basis of that visit, the Secretary-General and his Personal Envoy would provide to the Security Council their views of the options available to it with respect to the conflict.

4. In his report, the Secretary-General also informed the Security Council that his Special Representative, William Lacy Swing, had continued his regular contacts with representatives of the parties and neighbouring States in order to keep an open channel of communication and to review periodically the situation on the ground. In that connection, he had held regular exchanges with the MINURSO Coordinators of the Government of Morocco and the Frente POLISARIO in Laayoune and the Tindouf area, respectively.

5. With regard to the activities of the Identification Commission, the Secretary-General informed the Security Council that the Commission had continued its work on the electronic archiving of the 244,643 individual files of persons who had applied to be included in the list of voters for the referendum in Western Sahara.

6. The Secretary-General further informed the Council that the restrictions imposed by the Frente POLISARIO since January 2001 had progressively been lifted and, by the end of June 2002, patrolling of MINURSO military observers had been resumed in all Frente POLISARIO military regions east of the berm, in accordance with the provisions of the ceasefire arrangements between the Frente POLISARIO and MINURSO.

7. Concerning the prisoners of war and persons unaccounted for, on 18 June 2002, the Frente POLISARIO had announced its decision to release, at the request of a Member State, 100 of the 1,361 prisoners of war it held. Those prisoners of war had been repatriated under the auspices of the International Committee of the Red Cross (ICRC). ICRC had continued exchanging information with the parties with a view to determining the fate of persons unaccounted for since the beginning of the conflict. The Secretary-General reminded the Council that some 1,260 Moroccan prisoners of war continued to be held in connection with the Western Sahara conflict. While all of the prisoners of war had been detained for more than 10 years after the cessation of active hostilities, in contravention of international humanitarian law, most of them (816) had been detained for more than 20 years.

8. With regard to the work of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the area, the Secretary-General informed the Security Council that his Special Representative and UNHCR had held two rounds of consultations with representatives of the parties and neighbouring States on the implementation of confidence-building measures providing for the establishment, at no cost to the beneficiaries, of telephone, mail and e-mail services between the Territory west of the berm and the Tindouf refugee camps and some parts of Mauritania, as well as for UNHCR-implemented exchange visits of separated Saharan family members between those locations. In the first round of talks, the parties agreed in principle to the implementation of those measures. However, during the second round of consultations to discuss the implementation of the confidence-building measures, obstacles emerged, especially regarding the modalities for the selection of participants for the exchanges of family visits. MINURSO and UNHCR would continue to review that issue, with a view to assisting the parties to find a mutually acceptable means of moving forward on it. In the meantime, underfunding of the food pipeline for the Western Saharan refugees had led to intermittent shortages throughout 2002. MINURSO had continued to support actively efforts to secure adequate funding for the refugee programmes. As a result of those efforts, the World Food Programme (WFP) and the European Commission Humanitarian Aid Office had approved humanitarian assistance programmes for the refugee camps and the refugee food requirements for 2002 had been met.

9. In concluding his report, the Secretary-General recalled that the Security Council and the United Nations had worked for nearly two decades to assist the parties to find a solution to the conflict. As the parties considered the proposal presented by his Personal Envoy, the Secretary-General asked them to demonstrate statesmanship and seize the new opportunity to provide the people of Western Sahara a chance for a better life. In order to give the parties time to consider the proposal presented to them by his Personal Envoy, the Secretary-General recommended a technical rollover of the MINURSO mandate for a period of two months, until 31 March 2003. He urged the parties to release without further delay those who had been held for so long in contravention of basic international humanitarian law and to embark on confidence-building measures to help to alleviate the considerable suffering of the refugees.

10. On 30 January 2003, the Security Council adopted resolution 1463 (2003), by which it extended the mandate of MINURSO until 31 March 2003 in order to give the parties time to consider the proposal presented to them by the Personal Envoy of

the Secretary-General. It also requested the Secretary-General to provide a report on the situation by 17 March 2003.

11. Subsequently, the Secretary-General sent a letter, dated 19 March 2003, to the President of the Security Council (S/2003/341), in which he referred to the activities of his Personal Envoy pursuant to Security Council resolution 1463 (2003). The Secretary-General pointed out that his Personal Envoy had presented and explained to the parties a proposal for a political solution to the conflict in Western Sahara entitled "Peace plan for self-determination for the people of Western Sahara". Mr. Baker had submitted his proposal to King Mohammed VI of Morocco on 14 January 2003, to President Abdelaziz Bouteflika of Algeria on 15 January 2003 and to the Secretary-General of the Frente POLISARIO, Mohamed Abdelaziz, and President Maaouya Ould Sid' Ahmed Taya of Mauritania on 16 January 2003. In order to allow additional time for all the parties and neighbouring countries to submit their responses to his proposal, the Secretary-General proposed to defer the submission of his report to the Security Council until 19 May 2003. He also proposed a technical extension of the mandate of MINURSO for a further period of two months, until 31 May 2003.

12. The Security Council, by its resolution 1469 (2003) of 25 March 2003, decided to extend the mandate of MINURSO until 31 May 2003. It also requested the Secretary-General to provide a report on the situation by 19 May 2003, as proposed in his letter to the President of the Security Council of 19 March 2003 (S/2003/341), including the views of the parties to the proposal that was presented to them by his Personal Envoy in January 2003.

13. Pursuant to resolution 1469 (2003), the Secretary-General submitted to the Council on 23 May 2003 a report (S/2003/565), in which he informed the Council that his Special Representative, William Lacy Swing, had continued to maintain regular contacts with representatives of the parties. The Special Representative had also met with senior officials from ICRC, UNHCR and WFP to discuss the resolution of pending humanitarian issues related to the conflict, as well as with representatives of major donor countries. On 16 May 2003, the Secretary-General announced that he intended to appoint Mr. Swing as his Special Representative for the Democratic Republic of the Congo as of 1 July 2003 (S/2003/562).

14. With regard to the activities of the Identification Commission, the Secretary-General informed the Security Council that the Commission had finished its archiving work at the end of May 2003.

15. As to military matters, the Secretary-General informed the Council that the Mission's area of responsibility had remained calm, although the Frente POLISARIO had continued to impose some minor limitations on the Mission's freedom of movement. While those limitations did not significantly affect the ability of MINURSO to monitor the situation east of the berm, their removal would have increased the efficiency of the Mission's ground and air patrolling activities.

16. Concerning the prisoners of war and persons unaccounted for, on 26 February 2003, ICRC had repatriated to Morocco 100 prisoners of war, whose release the Frente POLISARIO had announced on 10 February 2003 in response to a request by a Member State. The Frente POLISARIO continued to hold 1,160 prisoners of war, some of whom had been in detention for more than 20 years.

17. With regard to the refugees, the Secretary-General recalled that the Frente POLISARIO and the Government of Morocco, although agreeing in principle to the confidence-building measures proposed by UNHCR, had expressed divergent views on the implementation of such measures. Efforts to achieve a compromise formula had thus far failed, as neither side was willing to reconsider its position. UNHCR and the Special Representative of the Secretary-General had continued their efforts to implement the measures, focusing on those activities that were not contested by the parties. The Special Representative had met individually with officials of the Frente POLISARIO and of the Government of Morocco in February to discuss a modified UNHCR proposal on confidence-building measures to provide limited telephone and personal mail services between some of the Tindouf area refugee camps and the Territory. The idea of movement of persons across the berm could be revisited at a later stage. Accordingly, on 15 April, UNHCR had inaugurated a free, one-way, UNHCR-operated telephone service between one of the camps and the Territory. On 16 April, however, the Frente POLISARIO had requested that the service be suspended and it had yet to be reactivated. The two-way personal mail exchange between the Tindouf refugee camps and the city of Laayoune in the Territory, which was scheduled to begin on 15 May, had been postponed upon a request from the Government of Morocco. Meanwhile, although the overall situation of food assistance to the Western Saharan refugees in the Tindouf area had improved slightly, shortages of some critical items remained and the overall level of donor support for the WFP assistance programme for Western Saharan refugees continued to be low.

18. The Secretary-General also assessed the progress and problems realized since the appointment of his Personal Envoy. He recalled in that respect that in his report to the Security Council of 20 June 2001 (S/2001/613), he had described in some detail the difficulties the United Nations had encountered over the past 11 years in its effort to implement the settlement plan (S/21360 and S/22464 and Corr.1), which had resulted in repeated breakdowns in the identification process. The Secretary-General also recalled the difficulties that his Personal Envoy had encountered during the period of his tenure. (Those developments were described in paragraphs 29 to 40 of the report of the Secretary-General on the question of Western Sahara contained in document A/57/206).

19. In his report to the Security Council (S/2003/565), the Secretary-General added that, owing to the parties' incompatible positions with respect to the possibility of negotiating changes in the draft framework agreement, which had been favoured by Morocco, or the proposal to divide the Territory, which had been favoured by Algeria and the Frente POLISARIO, in his report of February 2002 (S/2002/178), he had presented four options for consideration by the Security Council which would not have required the concurrence of the parties.

20. As a first option, the United Nations could have resumed its efforts to implement the settlement plan without requiring the concurrence of both parties before action could be taken. That effort would have begun with the appeals process, but, even under that non-consensual approach, the United Nations in the years ahead would have faced most of the problems and obstacles that it had faced in the preceding 10 years. As Morocco had expressed unwillingness to go forward with the settlement plan, the United Nations might not be able to hold a free and fair referendum whose results would have been accepted by both sides. Moreover, the question of a mechanism to enforce the results of the referendum would persist.

21. As a second option, the Personal Envoy could have undertaken to revise the draft framework agreement, taking into account the concerns expressed by the parties and others with experience in such documents. However, in that event, the Personal Envoy would not have sought the concurrence of the parties, as had been done in the past with respect to the settlement plan and the draft framework agreement. The revised document would have been submitted to the Security Council, which would then have presented it to the parties on a non-negotiable basis. If the Council had agreed to that option, the size of MINURSO could have been reduced.

22. As a third option, the Security Council could have asked the Secretary-General's Personal Envoy to explore with the parties one final time whether or not they were willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory, with the understanding that nothing would be decided until everything had been decided. Under that option, in the event that the parties were unwilling or unable to agree upon a division of the Territory by 1 November 2002, the Personal Envoy would have been asked to show to the parties a proposal for division of the Territory that would also have been submitted to the Security Council. The Council would then have presented the proposal to the parties on a non-negotiable basis. The Secretary-General pointed out that such an approach to a political solution would have given each party some, but not all, of what it wanted and would have followed the precedent, but not necessarily the same territorial arrangements, of the division agreed to in 1976 between Morocco and Mauritania. If the Council had chosen that option, MINURSO could have been maintained at its present size, or it could have been reduced.

23. As a fourth option, the Security Council could have decided to terminate MINURSO, thereby recognizing and acknowledging that after more than 11 years and the expenditure of nearly half a billion dollars, the United Nations was not going to solve the problem of Western Sahara without requiring that one or both of the parties did something that they did not voluntarily agree to do.

24. The Security Council had not been able to agree on any of the options. Instead, by its resolution 1429 (2002), it had expressed its continued strong support for the efforts of the Secretary-General and his Personal Envoy to find a political solution that would provide for self-determination, taking into account the concerns expressed by the parties and consulting, as appropriate, others with relevant experience. The Security Council had also called upon the parties and the States in the region to cooperate fully with the Secretary-General and his Personal Envoy in that regard.

25. Consequently, the Personal Envoy, during his visit to the region from 14 to 17 January 2003, had presented to the parties and neighbouring countries a peace plan for self-determination of the people of Western Sahara (see S/2003/565, annex II), which he had also shared with members of the Security Council in March. The Secretary-General believed that the peace plan provided a fair and balanced approach towards a political solution to the question of Western Sahara, providing each side some, but perhaps not all, of what it wanted. The peace plan incorporated elements of the draft framework agreement, favoured by Morocco, as well as elements of the settlement plan and of the Houston Accords, agreed to by both sides and favoured by the Frente POLISARIO. The peace plan represented a compromise. It envisaged a period of transition during which there would be a division of

responsibilities between the parties before the holding of a referendum for self-determination that would provide the bona fide residents of Western Sahara with an opportunity to decide their future. Unlike the settlement plan, the peace plan did not require the consent of both parties at each and every stage of its implementation.

26. The report also contains the responses of the parties and neighbouring countries to the peace plan (see ibid., annex III). Assessing the parties' responses, the Secretary-General had stated that the main objection of Morocco to the peace plan seemed to be that in the referendum to determine the final status of Western Sahara, one of the ballot choices was independence. That, however, was also one of the two ballot choices under the settlement plan, which Morocco had accepted. Furthermore, it was difficult to envision a political solution that, as required by the Security Council in its resolution 1429 (2002), provided for self-determination but precluded the possibility of independence as one of several ballot questions. That was particularly difficult to envision given: (a) Morocco's stated commitment to the settlement plan over so many years; and (b) the inclusion in the electorate for the referendum foreseen under the peace plan of all those who had resided continuously in Western Sahara since 30 December 1999, as opposed to only those who would be included in the voter list, created on the basis of the work of the Identification Commission.

27. The Secretary-General was of the view that the peace plan could be amended in a manner that might assuage the concerns of Morocco. That would be to provide a third ballot choice, i.e., "continuation of the division of authority set forth in article III of the peace plan", in other words, self-government or autonomy for the Territory. It was recalled that Morocco had for some time supported the concept of self-government or autonomy as the solution to the conflict over Western Sahara. The Secretary-General and his Personal Envoy proposed that that third question be included on the ballot for the referendum on the peace plan. If none of the three ballot questions obtained a majority of votes, the one receiving the fewest votes would be eliminated and a run-off referendum would be held to allow voters to choose between the two remaining ballot questions. If the third option, self-government or autonomy, prevailed, the electorate for future elections of the executive and legislative bodies of the Western Sahara Authority would be the bona fide residents of Western Sahara over the age of 18.

28. The Secretary-General informed the Security Council that the chief objection of the Frente POLISARIO to the peace plan seemed to be that it was not the settlement plan. The Frente POLISARIO suggested that the parties revert to the implementation of the settlement plan, with two new elements: (a) that the Identification Commission would process all 130,000 appeals, with no requirement that sheikhs participate, and with the Commission's decisions accepted as final; and (b) that a mechanism would be added to provide for enforcement of the results of the referendum under Chapter VII of the Charter of the United Nations. The Secretary-General observed that even with those two new elements, the settlement plan would still require the parties' consent at every stage of its implementation. It was difficult to envision Morocco consenting to the proposal of the Frente POLISARIO as a way of implementing the settlement plan. As far as adding a Chapter VII mechanism to enforce the results of the referendum, the Secretary-General recalled that, following his report of February 2002 (S/2002/178), the Security Council would not choose any of the four options proposed by the Secretary-General and his Personal Envoy because neither party would consent or agree to one of them. He considered it

therefore quite unlikely that the Council would decide to enforce the result of the referendum under Chapter VII.

29. The Secretary-General added that the responses of the parties also contained a number of ostensibly technical objections to the peace plan. However, when taken together, those objections suggested that the parties still lacked the genuine will required to achieve a political solution to the conflict.

30. The Secretary-General further added that the Security Council should not exclude the possibility that it might be asked by one or both parties to support a process in which objections and/or changes to the peace plan would be negotiated between them, perhaps under the auspices of the United Nations. However, he did not believe that such an approach would be conducive to moving the process forward. Rather, the Secretary-General and his Personal Envoy believed that the parties should accept the plan as proposed. The Secretary-General further recalled in that connection that over the six-year period of his Personal Envoy's involvement with the issue, he had convened the parties nine times, usually with discouraging results.

31. In conclusion, the Secretary-General observed that after more than 11 years and an amount of assessed contributions close to $500 million, it should be acknowledged that the Security Council was not going to solve the problem of Western Sahara without asking that one or both of the parties do something they were not otherwise prepared to do. Pursuant to Security Council resolution 1429 (2002), the Personal Envoy had developed a fifth option, "the peace plan for self-determination of the people of Western Sahara", in addition to the four that had been described in the report of the Secretary-General of 19 February 2002 (S/2002/178). The Secretary-General recommended that the Council endorse the peace plan. The four earlier options could, of course, still be considered, but if the Council was not prepared to revisit them with a view to making a choice, he recommended that the parties be asked by the Council to agree to the peace plan and to work with the United Nations to implement it.

32. The Secretary-General added that he had reluctantly come to the conclusion that unless and until the parties demonstrated readiness to assume their own responsibilities and make the compromises necessary to reach a successful outcome to the conflict, a fresh initiative to find a solution to the question of Western Sahara was likely to suffer the same fate as the earlier ones. Accordingly, he urged the Security Council to seize the opportunity to address effectively the long-standing issue of Western Sahara by requesting the parties to agree to the peace plan as amended and to work with the United Nations in its implementation.

33. The Secretary-General concluded that if the parties could not agree on an approach for a political solution and if the Security Council was not in a position to ask them to take steps that they did not perceive to be in their own interest, despite the fact that it might clearly be in the interest of the population of Western Sahara, the Council might wish to consider whether it was inclined to remain actively seized of that political process.

34. On 30 May 2003, the Security Council adopted resolution 1485 (2003), by which it extended the mandate of MINURSO until 31 July 2003 in order to consider further the report of the Secretary-General of 23 May 2003 (S/2003/565).